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IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6494 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE S.D.PANDIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? No.
2. To be referred to the Reporter or not? Yes

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3. Whether Their Lordships wish to see the fair copy of the judgement? No.
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No.
5. Whether it is to be circulated to the Civil Judge? No.

RAKESH RAMESHCHANDRA BELANI

Versus

HIGH TECH INVESTMENT CASTING P. LTD

Appearance:

MR IM PANDYA for Petitioner
MR MANISH R BHATT for Respondent No. 1

CORAM : MR.JUSTICE S.D.PANDIT

Date of decision: 06/07/98

ORAL JUDGEMENT

Rule. Mr. Manish R.Bhatt waives service of notice of Rule on behalf of the respondent.

2. Rakesh Rameshchandra Belani has filed the present petition to challenge the award passed by the Labour Court, Bhavnagar in Ref. No. 261 of 1996 on 5.9.97.

3. The petitioner was working with the respondent since 25.6.1990 and he was department incharge since the date of his appointment and was drawing a salary of Rs. 2,365/- p.m. On 30.6.1996 his services were terminated by issuing a notice and by paying 3 months salary. The petitioner contended that his dismissal was illegal and therefore, he raised an industrial dispute which was referred to the Labour Court, Bhavnagar being Ref. No. 261 of 1996.

4. The respondent has contended before the Labour Court that the petitioner was not a "workman" as per the provisions of section 2(s) of the Industrial Disputes Act 1947. It was further contended that the respondent had lost confidence in the petitioner as it was felt by the respondent that the petitioner was disclosing confidential information and matters pertaining to the production to others and therefore, it was causing loss to the respondent.

5. The Labour Court allowed both the sides to lead evidence in support of their contentions and after considering the evidence before the Labour Court, the Labour Court came to the conclusion that the petitioner was drawing salary of more than Rs. 1600/- p.m. and was also performing supervisory duties. Therefore, he was falling in the 4th category of the exceptions given in section 2(s) of the I.D.Act. Consequently, he was not a workman and therefore, the reference was rejected.

6. Mr. Pandya learned advocate for the petitioner has very vehemently urged before me that the petitioner had no power to make appointment and therefore, the petitioner ought not to have been denied the status of a workman. Therefore, it is necessary to consider the provisions of section 2(s) of the I.D.Act in order to consider the question as to whether the petitioner would fall in the category of workman as defined in the I.D.Act. Section 2(s) of the I.D.Act runs as under:

"workman" means any person (including an apprentice) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for

hire or reward, whether the terms of employment be express or implied, and for the purposes of any proceeding under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of, that dispute, or whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person-

- (i) who is subject to the Air Force Act, 1950 (45 of 1950, or the Army Act, 1950 (46 of 1950), or the Navy Act, 1957 (62 of 1957) or
- (ii) who is employed in the police service or as an officer or other employee of a prison; or
- (iii) who is employed mainly in a managerial or administrative capacity; or
- (iv) who, being employed in a supervisory capacity, draws wages exceeding one thousand six hundred rupees per mensem or exercise, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature.]"

The petitioner himself has averred in para 2 of his petition that the petitioner was working as department incharge since 25.6.90 and the last salary of the petitioner was Rs.2,365/-. The respondent had led oral evidence as well as documentary before the Labour Court to show that the petitioner was performing supervisory work. Said evidence led by the respondent has been believed and accepted by the Labour Court. In view of accepting said evidence as regards the petitioner doing supervisory work and petitioner's own admission of drawing pay of more than Rs. 1600/- p.m., the Labour Court has come to the conclusion that the petitioner does not fall within the definition of "workman" as per section 2(s) of the I.D.Act. Said finding of fact recorded by the Labour Court could not be said to be either perverse or grossly erroneous so as to interfere with the said findings by exercising powers under Articles 226 and 227 of the Constitution of India. The finding is recorded by the Labour Court on appreciation of the oral and documentary evidence led before it. There is no material to come to the conclusion that the finding of fact recorded by the Labour Court is either perverse or grossly erroneous. In the circumstances the

petition deserves to be dismissed and it is accordingly dismissed. No order as to costs. Rule discharged.

(S.D.Pandit.J)